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07-2-12633-9 28933759 MTSMJG 01-07-08

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A.M. JAN - 4 2008 P.M.

PIERCE COUNTY, WASHINGTON
KIM S. STOKES, CLERK
BY: [Signature]

IN THE SUPERIOR COURT OF WASHINGTON STATE

IN AND FOR THE COUNTY OF PIERCE.

DOUGLAS TOBIN,	:	NO: <u>07-2-12633-9</u>
	:	
Plaintiff,	:	
	:	
v.	:	MOTION FOR SUMMERY
	:	JUDGMENT.
	:	
STATE OF WASHINGTON,	:	Pursuant CR. 56 (a)
PIERCE COUNTY,	:	
	:	
<u>Defendant's.</u>	:	

A. RELIEF REQUESTED.

Plaintiff Douglas Tobin, moves this Court for Summery Judgment based upon the Attached Pleadings entered in the above entitled cause. Response of the Defendant's. Which proved beyond a Reasonable Doubt that there was a Breach of Contract between Plaintiff and named Defendants.

B. STATEMENT OF FACTS.

On or about March 18, 2002, the State of Washington and the County of Pierce Seized Substantial amount of Plaintiffs Personal Property.

On December 10th, 2003, the State of Washington and the County of Pierce entered into an Agreement for

PLAINTIFFS MOTION FOR SUMMERY JUDGMENT (1)

1 return of Plaintiff's Personal Property. Under Cause
2 Number 02-1-005810-0.

3 Plaintiff's Daughter went to get the Said Property
4 and was Given a couple bags of Garbage. She Photographed
5 the items returned. And was told that was all of the
6 Property not knowing that the Property was kept under
7 a Different Number.

8 After several attempts to get his property back,
9 or compensation for the property. Petitioner Filed Suit.

10 Plaintiff Filed Suit against the Defendant's for
11 Breach of Contract arising out of the Fact that the
12 Defendant's did not Return the Property as Agreed to.
13 See Order of Stipulation Cause Number #02-1-005810-0.
14 In which the State of Washington Claimed to have
15 Searched, Seized, and Forfeiture, of Real Personal
16 Property taken on March 18, 2002. (see order of
17 stipulation)

18 Plaintiff claimed that the Defendant's Breached
19 that Contract that allowed Plaintiff, return of some
20 Property Seized by the State of Washington and the County
21 of Pierce on March 18th 2002. See Appendix A. Stipulation
22 of Forfeiture. Appendix B. of Items Seized. (for a more
23 detailed inventory see Defendants seizure list)

24 It should be noted that Plaintiff had Counsel during
25 those Proceedings and that there had been Bar complaints
26 against him, who was Ineffective, and did not act in

1 the best interest of his Client. (this issue is another
2 suit, which can not be discussed herein)

3 Plaintiff, filed a Motion for Discovery of Documents
4 that had been denied him throughout his case when it
5 was being tried. And Defendant's have produced a
6 "affidavit in support of a search warrant". But still
7 no warrant. (The Defendants Admit No such Warrants
8 Exist.)

9 The Defendant's have Supplied Plaintiff, with
10 Evidence, and Statement that they Never had a Valid
11 Seizure under Cause Number 02-1-005810-0. Contrary to
12 the Stipulated Agreement.

13 It is the Defendant's statement that all Items
14 seized where actually under another cause number which
15 would make the agreement Null and Void and Invalidates
16 any Agreement made. Meaning that the State of Washington
17 Nor Pierce County could claim the Property by cause
18 number 02-1-005810-0.

19 C. STATEMENT OF ISSUES.

20
21 A) WHETHER THERE WAS A SIGNED CONTRACT AGREEMENT
22 BETWEEN PLAINTIFF AND DEFENDANT'S. (already admitted
by Defendants)

23
24 B) WHETHER THE CONTRACT WAS BREACHED BY DEFENDANT'S.
(failed to return property)

25 D. EVIDENCE RELIED UPON.
26

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1 a) Plaintiff Relies on the Written Contract with the
2 State of Washington and the County of Pierce for his
3 Claim to Property. See Attached Stipulated Agreement.
4 or Appendix A of Original Complaint.

5 b) Plaintiff relies upon the Defendant's Admission
6 that there was a Signed Contract between himself and
7 the Defendant's. And

8 c) Plaintiff relies upon the Admission of Defendant's.
9 that stated "No search warrants were issued under Cause
10 Number 02-1-005810-0,". Response page 1, lines 19-20.
11 If there was No Search Warrant, there was no Legal bases
12 for the Seizure under 02-1-05810-0, and No Property
13 under that cause., and therefor, the Defendant's could
14 not have entered into a contract under that number.

15 E. LEGAL AUTHORITY.

16 This Motion is made pursuant to CR. 56, (a) (b)
17 provided that a Party can Motion for Summery Judgment
18 to save time, money and Court Costs of Trial, when there
19 is no Genuine Issues Material Facts, that the Defendant's
20 have not already Admitted Too. Or shown in the Evidence
21 Presented. As follows;

22 a) The Agreement between the Defendant's and Plaintiff,
23 at lines 12-13. State;

24 THE FOLLOWING STIPULATION REGARDING THE FORFEITURE
25 OF PROPERTY, SEIZED PURSUANT TO A SERIES OF SEARCH
26 WARRANTS SERVED ON MARCH 18, 2002."

1 By the very wording stated in the Agreement, it
2 stated there was "a series" of Search Warrants for the
3 property under Cause Number, 02-1-01236-3. And not
4 02-1-5810-0. In Which the Agreement was made.

5 In Fact and in Law there was No Search Warrants
6 issued for 02-1-05810-0. And the Agreement is based
7 upon Another Cause, and False Information as to the
8 Search Warrants by the Pierce County Prosecuting
9 Attorney's Office. (see note of address at bottom right
10 hand corner)

11 The Prosecutions placement of wrong number and
12 Information in the Agreement could and does constitute
13 Prosecution Misconduct, Bad Faith, and Fraud on the
14 part of Defendant's. Axtell v. MacRae, 133 Wash 490,
15 233 P. 934 (1925); Barr v. Interbay Citizens Bank, 96
16 Wn.2d 692, 635 P.2d 441 (1981).

17 A contract is rendered voidable when there is a
18 misrepresentation written into the contract as was done
19 herein this case. Yakama County Fire v. City of Yakima,
20 122 Wn.2d 371, 858 P.2d 245 (1993); Anthony v. Warren,
21 28 Wn.2d 773, 184 P.2d 105 (1947).

22 Here the Contract was Void by its own terms. let
23 alone the Breach of the Agreement by the Defendant's.
24 And for this Reason the Court should Grant Summery
25 Judgment.

26 b) Plaintiff states that the Defendant's Admit there

1 was a Written Contract.

2 At page 2 lines 22-25, of the Defendant's Answer
3 and Affirmative Defense. They state;

4 "THE DEFENDANT STATE OF WASHINGTON ADMITS THE
5 ALLEGATION IN PARAGRAPH D,. B(2) THAT THE DEFENDANT
6 STATE OF WASHINGTON THROUGH DEFENDANT PIERCE COUNTY
7 ENTERED INTO A WRITTEN AGREEMENT."

8 Here there is not Material Factual Dispute. There
9 was a Written Contract. Between the Plaintiff and
10 Defendant's. Their only Defense is that they complied
11 with the Agreement. Which was disputed. But is void
12 now due to the Defendant's admissions as to the Agreement
13 and No Authority in which to Seize the property.

14 c). The Defendants admit at page 1 of Defendant's state;
15 "To the best of Defendant's Knowledge No such Search
16 Warrants were issued under Pierce County Cause Number
17 02-1-005810-0."

18 Under the Laws of Search and Seizure. Seizure is
19 accomplished under the Cause and Venue of the Number
20 in which the charge is based. Herein, the Seizure was
21 under 02-1-01236-4.

22 The Defendant's when forfeiting Plaintiff's
23 Property, used another Cause Number in which the Property
24 was never Transferred too, which made the Forfeiture
25 Illegal.

26 As can be seen from this admission the Respondent's

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1 used False information in the Agreement to mislead
2 Plaintiff into signing away property seized in another
3 Case and Cause. Which makes the Agreement Invalid. for
4 the Defendants the Agreement between Plaintiff and the
5 Defendants could not have been reach.

6 Here, the Original Agreement made by the Prosecutor
7 of the county of Pierce, made an Illegal Contract, and
8 therefore, breach the contract before it was even in
9 effect.

10 The very fact that the Defendant's did not Return
11 the Property becomes a Moot point since the contract
12 was Void from the Beginning.

13 But the Fact remains that Property was Not Returned.
14 And "the Respondent's Witness Detective Volz, statement
15 that "they" returned all property, and had Signed
16 Receipts. But they did not produce the Receipt. While
17 Plaintiff, has Produce a Witness, and can produce more,
18 who were present as well as Photographs of the Items
19 that were returned.

20 Detective Volz's, in his statement is on a fishing
21 trip to support his Employer. In which he is in Error
22 of the Record, the Contract, and Agreement between
23 Plaintiff and the Defendants.

24 F. PROPOSED ORDER OF PLAINTIFF.

25 Plaintiff, asks this court for an Order that the
26 Defendant's pay Plaintiff the Requested \$6.000.000.00

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1 Million Dollars in Damages Requested.

2 Plaintiff Purposes that the Defendnat's pay for;

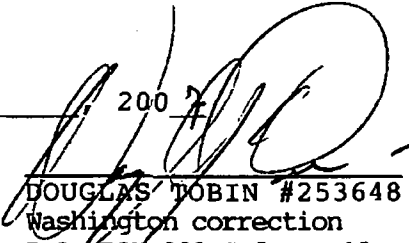
3 (1) The Estimated \$3.000.000.00 dollars in Real Property.

4 (2) \$1.500.000.00 in Interest since the December 10,
5 2003, and

6 (3) \$1.500.000.00 in other costs, attorney fees, and
7 Investigation costs, and any costs that the Court
8 believes that Plaintiff is entitled to.

9
10 Respectfully Submitted.

11
12 Dated this 23 day of 12 200 7

13 
14 DOUGLAS TOBIN #253648
15 Washington correction
16 P.O. BOX 900 Cedar A-12
17 Shelton, WA 98584

18
19
20
21 STATE OF WASHINGTON, County of Pierce
22 ss: I, Kevin Stock, Clerk of the above
23 entitled Court, do hereby certify that this
24 foregoing instrument is a true and correct
25 copy of the original now on file in my office.
26 IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this
day of FEB 12 2009, 20
Kevin Stock, Clerk
By 